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September 6, 2013

Michael G. Goldsmith, Chief
Norfolk Police Department
100 Brooke Avenue
Norfolk, Virginia 23510

HAND-DELIVERED

RE: Legal Review of Use of Force
May 20, 2013 – Norfolk Police Officer M. Watson

Dear Chief Goldsmith:

I have now had the opportunity to thoroughly review the evidence pertaining to the May 20, 2013 use of deadly force by Officer M. Watson which occurred in the area of the 2000 block of Colonial Avenue [drive thru lanes of Wells Fargo Bank] in the City of Norfolk, Virginia. I have concluded the use of force through the discharge of a firearm by Officer M. Watson to protect the safety of Officer Watson's partner, Norfolk Police Officer M. Williams, and to apprehend Joshua A. Johnson, age 22, was appropriate and justified under the circumstances. Mr. Johnson sustained multiple gunshot wounds and was declared dead at the scene.

FACTUAL FINDINGS OF THE INVESTIGATION

At approximately 2:40 p.m. on May 20, 2013 employees of the Wells Fargo Bank located at 2000 Colonial Avenue in the City of Norfolk had their attention drawn to what appeared to be a stolen Navy Federal Credit Union Check #2860 for \$400 unlawfully presented by a male and a female occupant of a gold Mercedes vehicle at the drive thru window at the bank. The Wells Fargo Bank building sits on the corner of Colonial Avenue and 21st Street with the main entrance for foot traffic on the Colonial Avenue side of the building. The drive thru lanes exit out onto 21st Street.

Bank personnel recognized the driver of the Mercedes as Joshua Johnson, who had an account at Wells Fargo Bank. The teller noted that the handwriting on the check was the same as the handwriting on the rear endorsement. At the same time another Wells Fargo teller observed the front seat female passenger rolling what they described as a "blunt" [a marijuana cigarette] in the car.

The drive thru teller at Wells Fargo Bank notified a Wells Fargo Service Manager of the situation and showed her the check. The Service Manager then called the phone number on the check for the account holder, a female Lieutenant Commander in the United States Navy. The account holder confirmed her checkbook and her purse had been stolen when her car window was smashed in while attending a soccer game near Ghent Elementary on Sunday, May 20, 2013. The rightful owner of the check confirmed that she had not filled out the check nor authorized its use.

Having learned from the true owner of Navy Federal Credit Union Check #2680 that a criminal offense was being committed, the Wells Fargo Service Manager instructed the drive thru teller to ask for the identification of the individuals in the car in order to process the check while she [the Service Manager] called the police. Later, the police showed the true owner of Navy Federal Credit Union Check #2860 the check presented on May 20, 2013 at the Wells Fargo Bank, the true owner reconfirmed that Check #2860 had been in her purse which had been stolen from her secured car and that she never wrote out the check nor made it payable to "Joshua Johnson."

The Wells Fargo Bank Service Manager called the Norfolk Police Department and described the ongoing situation at the bank referencing the confirmation with the victim of the stolen checkbook, the presentation of the stolen check for payment in the amount of \$400, and the apparent drug possession. The 911 operator dispatched police officers to respond to the Wells Fargo Bank. Norfolk Police Officer M. Watson and Norfolk Police Officer M. Williams responded to the dispatch call with Officer Watson driving a Norfolk Police Department patrol car with his partner, Officer Williams, riding in the passenger position. As the patrol car approached the bank, Officer Watson stopped the car briefly to allow his partner, Officer Williams, to get out on the Colonial Avenue side of the bank to circle around and approach the drive thru lanes on foot from where the vehicles enter the lanes.

Employees of the Wells Fargo Bank confirmed that a Norfolk Police Officer [Officer Watson] drove into the Wells Fargo Bank drive thru lanes off 21st Street and parked his marked police car across the drive thru exit to prevent the gold Mercedes which Johnson was driving from leaving the bank. The bank employees then watched the police officer in uniform get out of the police car and put his hand up [in a manner the employees described as signaling to "stop"].

The Wells Fargo Service Manager was still on the phone with the dispatcher as she observed the gold Mercedes start to quickly back up after the police officer [Officer Watson] exited his car. It was only after the gold Mercedes started to reverse that both the Wells Fargo Service Manager and a Wells Fargo Teller saw the first uniformed police

officer [Officer Watson] start to fire his gun as the gold Mercedes moved quickly in reverse.

A Wells Fargo Bank customer was waiting in her car behind the gold Mercedes in Drive Thru Lane 1 [the lane closest to the bank building] for several minutes while the occupants of the gold Mercedes interacted with the bank personnel. Agitated at the delay [and unaware of the ongoing inquiry into the stolen check], the customer backed up, and pulled into Drive Thru Lane 2. As the customer completed her transaction in Lane 2, she observed the police car quickly pull up and saw the police officer [Officer Watson] get out and instruct the driver of the gold Mercedes [Joshua Johnson] to "freeze" and to "stop". This bank customer was within a very short distance of the first police officer and could clearly see the gold Mercedes.

The bank customer then watched as the gold Mercedes started to reverse very fast [the witness heard the engine "roar"] in the process striking a second uniformed Norfolk Police Officer [Officer Williams] who was on foot approaching the gold Mercedes from the rear driver's side of the car. The bank customer watched the second police officer [Officer Williams] get thrown onto the trunk briefly before falling back to the ground. The bank customer in the Drive Thru Lane 2 said the first police officer [Officer Watson] started to fire his gun after the gold Mercedes moved into reverse toward the second police officer having failed to stop in response to the first officer's commands. The witness in Drive Thru Lane 2 said she thought the first police officer [Officer Watson] had fired his gun about seven times and the second police officer [Officer Williams] looked like he might have been run over by the gold Mercedes.

A male eyewitness who was walking near the corner of 21st Street and Colonial Avenue observed the marked Norfolk Police Department patrol car pull into the Wells Fargo Bank drive thru area off 21st Street in the wrong direction, blocking the exit. The witness later described seeing the patrol car's emergency lights on. This witness had a clear and unobstructed view of the subsequent events. According to this witness the Norfolk Police Officer [Officer Watson] told the man in the car several times to "get out of the car" [referring to the gold Mercedes]. The witness also saw a second Norfolk Police Officer [Officer Williams] in uniform approaching from behind the car toward the rear driver's side.

This witness commented that instead of the driver of the gold Mercedes "listening to what the cop [Officer Watson] was telling him", "he put the car in reverse" and that's when the cop standing behind the car [Officer Williams] got hit. The witness also said that it was not until the driver of the car [Joshua A. Johnson] put the car in reverse that the police officer [Officer Watson] started shooting. This witness also confirmed the second Norfolk Police Officer [Officer Williams] was struck by the gold Mercedes as it reversed continuing backward until it hit a building.

Another customer of the Wells Fargo Bank was walking toward the entrance of the bank on the Colonial Avenue side when he saw a police officer in uniform [Officer Williams] rushing around the bank apparently talking on the radio [observed to put his hand on his

radio] and say that he [Officer Williams] was “coming around back.” As the bank customer was entering the bank through the first set of doors he heard what he thought to be several verbal commands being yelled [described as “Stop” “get out of the car”] preceding several gunshots. This bank customer said the verbal instructions were loud enough so he heard them before the gunshots as he entered the bank.

The female passenger in the gold Mercedes with Joshua Johnson, Virgie Hairston, confirmed that she had accompanied Johnson to the Wells Fargo Bank and thought he was making a deposit. She acknowledged they had earlier driven through the drive thru at the same Wells Fargo Bank and Johnson had made a transaction at that time. Hairston confirmed that she and Johnson had a blunt [marijuana cigarette] in the car as the drive thru teller had noticed.

Hairston told police in a taped statement that she saw the Norfolk Police Officer pull up in his police car [Officer Watson] and get out saying “Stop” to Joshua Johnson who was starting to reverse the gold Mercedes. Hairston specifically stated that the police officer [Officer Watson] pulled his gun “as soon as he [Johnson] started backing up” and is yelling to Johnson to stop. Hairston said that when the police officer [Officer Watson] started to fire his gun, she ducked down. Hairston said she did not see the second police officer [Officer Williams] until the car had reversed so far that it hit a wall or building behind them when the second police officer [Officer Williams] tried to get her out of the car.

Virgie Hairston later acknowledged that she and the decedent, Joshua Johnson, deposited checks they knew to be unlawful into accounts and then improperly withdrew funds on those accounts. Hairston was subsequently charged with two (2) felony offenses of Conspiracy to Obtain Funds by False Pretense, one of which involved the May 20, 2013 incident. The second felony Conspiracy involved checks cashed between April 22 and 25, 2013 totaling \$3,100 from Navy Federal Credit Union ATMs in Norfolk. On August 13, 2013 Hairston pled guilty in the Circuit Court of the City of Norfolk to these two felony indictments.

The investigation revealed that Officer Watson and Officer Williams were dispatched to the Wells Fargo Bank for the report of a crime in progress. As they approached the Wells Fargo Bank in the same patrol car, Officer Williams got out of the patrol car and circled around the bank on foot to approach the drive thru lanes from the rear based upon the information provided as to the location of the suspect. Officer Watson said he flashed his emergency lights on and off to go around traffic as he pulled his marked Norfolk Police Department car into the drive thru lanes and parked in a position to block the exit.

Officer Watson said he observed the driver of the gold Mercedes look at him [Officer Watson] as he got out of the police car and Officer Watson told the driver to turn off the gold Mercedes. Officer Watson observed that at this point his partner, Officer Williams, was positioned behind the gold Mercedes. Officer Watson said the driver of the gold Mercedes [Joshua Johnson] quickly reversed the gold Mercedes at a high rate of speed as Officer Watson continued to give commands to “stop.”

Officer Watson observed the gold Mercedes strike Officer Williams. Officer Watson fired his service weapon at the driver of the Mercedes [Johnson] who had refused to stop. Officer Watson said he feared the gold Mercedes would kill Officer Williams as he had observed his partner, Officer Williams, fall behind the gold Mercedes out of his [Officer Watson's] view as Officer Watson heard the tires "screech." Officer Watson said he fired his service weapon to save his partner's life after Johnson had failed to follow his [Officer Watson's] instructions.

Officer Watson specifically said during his interview he wanted to avoid having to fire his weapon and only did so when his partner's life to his observation was in jeopardy. He estimated he was approximately 15 feet away from the gold Mercedes when he fired his service weapon and as the car accelerated in reverse, Officer Watson walked after it.

Officer Williams got up off the ground and struggled to assist Officer Watson secure the female passenger in the gold Mercedes. Officer Williams was then transported to Sentara Norfolk General Hospital for an apparent gunshot wound to his left thigh and impact injury to his left lower leg and foot from the gold Mercedes.

Officer Williams gave a statement while still at the hospital stating that he had personally talked to employees of the Wells Fargo Bank on the phone and been advised of the ongoing crime at the drive thru lane involving a stolen check. Officer Williams said that as they approached the bank, he got out of the police car and circled around to approach the drive thru lanes from the Colonial Avenue side.

Officer Williams said he was positioned a few feet behind the mid-point of the trunk of the gold Mercedes when he heard the car's engine "revving" and so he [Officer Williams] yelled at the driver to "stop." Officer Williams later explained he was moving from the driver's side of the gold Mercedes to a position off the rear passenger side of the car [to avoid being directly in line with Officer Watson] when this incident occurred.

Officer Williams said he heard Officer Watson tell the driver to "turn the car off." Officer Williams said that as the car started to reverse he saw the driver look over his right shoulder at Officer Williams. Officer Williams specifically stated he made eye contact with the suspect [Joshua Johnson] as Officer Williams yelled to "stop." As the gold Mercedes started to reverse directly at him, Officer Williams changed his position and began moving to his left [toward the bank building] to try and get out of the way of the reversing gold Mercedes.

Officer Williams was not successful in getting out of the way of the car and felt the impact of the car in his groin area as he was trying to lift himself upward which propelled him briefly onto the rear trunk. Officer Williams said he heard the gunshots but did not know immediately who was firing. Officer Williams fell off the trunk onto the ground partially under the vehicle with his chest and head clear of the edge of the car but his legs still under the bumper. Officer Williams said if the gold Mercedes continued to reverse

“my torso, my stomach, chest, and possibly my head” would have been run over by the gold Mercedes.

Officer Williams indicated the car had momentarily slowed or stopped and he attempted to clear his legs as the gold Mercedes then continued again to reverse running over his left foot. After this momentary pause, Officer Williams said he heard no additional gunshots. Officer Williams said the gold Mercedes continued to move past his position on the ground and crashed into a light pole and then the Long and Foster building. At this point Officer Williams became aware of the burning pain in his left thigh and realized he may have been shot which he radioed to dispatch.

FORENSIC INVESTIGATION

Police and rescue personnel responded to the area of the 2000 block of Colonial Avenue in the City of Norfolk where the gold Mercedes was observed to have reversed from the drive thru lane of the Wells Fargo Bank and gone over the sidewalk coming to a stop near the wall of the Long and Foster building, appearing to have struck the wall.

Norfolk Police Department Forensic personnel recovered thirteen (13) cartridge casings consistent with a gunshot pattern which revealed twelve (12) bullet holes in the windshield of the gold Mercedes to the driver's side of the midline of the windshield. One other bullet hole was identified in the area of the hood of the gold Mercedes just below the windshield. A number of bullet holes were identified in the back of the rear seat on the driver's side of car with the direction of fire being from the driver's side of the front windshield through the back seat [driver's side] to the driver's side rear area of the trunk of the gold Mercedes.

Analysis of the cartridge casings recovered from the scene by the Virginia Department of Forensic Science indicated that all thirteen (13) cartridge casings were fired from the service weapon recovered from Officer Watson. There was no physical evidence recovered from the scene supportive of a second handgun being fired in this incident.

The pavement between the area of the drive thru lane and the final position of the gold Mercedes revealed clear tread marks in the path of the gold Mercedes as it accelerated backward from the drive lane of the Wells Fargo Bank to a curbed landscaped median. The forensic investigation documented the gold Mercedes then continued to travel over the landscape median onto the parking lot of the Long and Foster building to the wall of which the car impacted. The tread marks are consistent with the witnesses' descriptions of the speed with which the gold Mercedes reversed and its direction of travel.

The Office of the Chief Medical Examiner conducted a thorough autopsy on the decedent, Joshua Johnson, and confirmed that Johnson died as a result of up to six (6) gunshot wounds the direction of which were described by the Medical Examiner as being from Johnson's front toward his back, consistent with the observed bullet entrance holes

in the driver's side of the front windshield of the gold Mercedes. A toxicology report did not indicate the presence of any illegal drugs or alcohol.

Forensic personnel recovered the stolen checkbook of the Navy Lieutenant Commander [to whom the Wells Fargo Bank employee had spoken confirming her checkbook had been stolen from her car with her purse when her car window had been smashed in] from the front seat of the gold Mercedes. There were also three other checks from a Monarch Bank account with an account holder's name not being either Joshua Johnson nor the female passenger [Hairston] located on the front seat area of the gold Mercedes.

Medical personnel at Sentara Norfolk General Hospital provided treatment to Officer M. Williams and confirmed he sustained a gunshot wound to his left upper leg on the lateral side. Pain emanating from Officer Williams' left foot was also documented with subsequent X-rays not indicating a fracture. Finally, hospital and investigation records confirmed that Officer Williams reported pain to his torso/lower back due to his impact with the car.

LEGAL ANALYSIS

It is appropriate initially to recognize that the role of the Commonwealth's Attorney in this case is to determine whether the actions of Officer Watson amounted to criminal misconduct.

The United State Supreme Court and the Supreme Court of Virginia have both held that a police officer has a sworn duty to act affirmatively when reasonably perceiving that an individual presents an imminent threat of serious bodily harm to others. Whether the danger is reasonably apparent is always to be determined from the viewpoint of the officer.

I have had the opportunity to review literally dozens of witness accounts of the events of May 20, 2013 in the drive thru area of the Wells Fargo Bank as well as forensic reports detailing this incident. To the extent in this letter I mention the accounts of certain witnesses please understand I highlight those witnesses who were in the best position to recount the events with the least obstruction of view.

Given my review of all the available evidence I have made the following conclusions:

First, on May 20, 2013 at the time and location of this incident, the decedent, Joshua Johnson, age 22, was involved in the commission of a crime, specifically the presentation of a stolen check taken from a woman's car [along with her purse] fifteen days earlier. Johnson had prior exposure not only to law enforcement but also to the judicial system both as a juvenile and an adult. Johnson's passenger in the gold Mercedes, Virgie Hairston, has subsequently been convicted of two felony offenses involving a criminal conspiracy with the decedent to obtain funds by false pretenses to include their actions at the Wells Fargo Bank on May 20, 2013.

Second, both Officer Watson and Officer Williams had been made aware prior to the encounter that the driver of the gold Mercedes was engaged in the commission of a crime at the time of their response to the Wells Fargo Bank.

Third, on May 20, 2013, several lay witnesses, as well as the police officers themselves, confirmed that the Norfolk Police Department Officers, specifically Officer Watson, who was in uniform and clearly recognizable as a law enforcement officer, repeatedly instructed the decedent, Joshua Johnson, to turn off his car and to stop which he ignored. Officer Williams clearly recalled Johnson making eye contact with Officer Williams who was positioned behind the gold Mercedes prior to Johnson reversing the car. The evidence confirms that Officer Watson initially took lesser measures than the use of force to stop the decedent who was engaged in the commission of a crime AND endangering his partner, Officer Williams.

Joshua Johnson during this incident was not under the influence of any drugs or alcohol which would have impaired his ability to comprehend the situation. Hairston, who was also inside the gold Mercedes, told police she heard Officer Watson tell Johnson to stop or turn off the car. At that point, the actions taken to "rev" the gold Mercedes, place the car in reverse, and then accelerate backward toward Officer Williams transformed the car into a deadly weapon under the law and Officer Watson was legally justified in viewing the gold Mercedes as posing a significant threat of death or serious bodily injury.

Fourth, Officer Watson did not fire his service weapon until after Joshua Johnson had accelerated the gold Mercedes in reverse placing Officer Williams in peril. Ignoring the statements of Officer Watson or Officer Williams on this issue, there are numerous eyewitnesses I detailed earlier who confirmed this point to include the female passenger, Hairston, who confirmed Officer Watson started to fire his gun as Johnson was backing up.

Fifth, Officer Williams was in a position of clear physical danger at the point that the decedent reversed the gold Mercedes and thereafter at the time Officer Watson fired his service weapon. Officer Williams stated he was at approximately the mid-point of the rear trunk of the gold Mercedes and tried to get back to the driver's side to safety as the car started to reverse toward him. Officer Williams said he was struck by the car, propelled up and onto the trunk briefly before going down to the ground. This sequence of events was directly confirmed by the bank patron in the next drive thru lane who stated the police officer looked like he "had been run over by the gold Mercedes" and also by the eyewitness walking nearby.

Sixth, the forensic examination of the gold Mercedes revealed the tightness of the gunshot pattern on the driver's side of the front windshield with a direction of fire from front to back of the gold Mercedes. For Norfolk Police Officer Williams to have sustained a gunshot wound in this incident, he had to be positioned behind the gold Mercedes exactly in the position of peril observed by Officer Watson and described by him as the basis to discharge his service weapon.

In this case I find the actions of Officer Watson were not contrary to the law and the evidence does not warrant the initiation of criminal charges.

CONCLUDING REMARKS

The loss of life in any situation is regrettable and warrants thorough review and reflection. My sympathies extend to the family of Joshua Johnson for their loss.

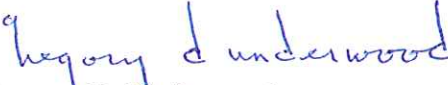
On May 20, 2013 Joshua Johnson chose to engage in criminal activity, specifically the passing of a stolen check forged in the amount of \$400 at the Wells Fargo Bank which victimized the true owner of the stolen checks and wrongfully sought to steal \$400. This criminal action by Johnson caused the bank employees to call for police assistance. Why Johnson, after having had prior exposure to the criminal justice system and being exposed to the consequences of such decisions, would choose to continue to commit criminal acts is an unanswered question beyond the scope of this legal review.

It is the expectation of every citizen that when a crime is occurring or when they or a loved one has been victimized that they can call the Norfolk Police Department and day or night a Norfolk Police Officer will respond and place themselves in danger to confront those who chose to commit crime. On May 20, 2013 the employees of the Wells Fargo Bank called for such assistance and the Norfolk Police Department responded to a crime in progress.

When Officer Watson, in uniform in the middle of the afternoon at the Wells Fargo Bank repeatedly told Joshua Johnson to stop or turn off his car, Johnson chose to put the car in reverse and struck Officer Williams. Why Joshua Johnson did not as one witness commented, "listen[ing] to what the cop was telling him" and instead "put the car in reverse" we will never know. What we do know is the reality of the danger which caused Officer Watson to discharge his service weapon, an action Officer Watson tried to avoid.

In consideration of all of the evidence available, it is my conclusion that Norfolk Police Officer M. Watson's use of deadly force was a justified response to the imminent danger that Joshua Johnson, who was engaged in the commission of a crime, presented to the safety of Officer M. Williams as well as the public and there is insufficient evidence to warrant further action.

Very truly yours,


Gregory D. Underwood
Commonwealth's Attorney